

1 THE HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SMACK APPAREL COMPANY,

Plaintiff,

v.

SEATTLE HOCKEY PARTNERS, LLC  
d/b/a SEATTLE KRAKEN; NHL  
ENTERPRISES, L.P.; and NATIONAL  
HOCKEY LEAGUE,

Defendants.

SEATTLE HOCKEY PARTNERS LLC d/b/a  
SEATTLE KRAKEN; NHL ENTERPRISES,  
L.P.; and NATIONAL HOCKEY LEAGUE,

Counterclaim-Plaintiffs

v.

SMACK APPAREL COMPANY,

Counterclaim-Defendant.

C22-44 TSZ

**STIPULATED  
PROTECTIVE ORDER**

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public  
2 disclosure and use extends only to the limited information or items that are entitled to confidential  
3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
4 confidential information under seal.

5 2. **“CONFIDENTIAL” AND “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”**

6 **MATERIAL**

7 “Confidential” material shall include documents and tangible things produced or otherwise  
8 exchanged that a disclosing party believes in good faith are not generally known to others, and  
9 which the disclosing party (i) would not normally reveal to third parties except in confidence or  
10 has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by  
11 a right to privacy under federal or state law or any other applicable privilege or right related to  
12 confidentiality or privacy.

13 “Highly Confidential-Attorneys’ Eyes Only” material shall include documents and  
14 tangible things that contain competitive or commercially sensitive information (including but not  
15 limited to non-public information concerning marketing or competitive research), the disclosure  
16 of which will result in competitive or commercial harm if disclosed to persons other than those  
17 authorized to view “Highly Confidential-Attorneys’ Eyes Only” materials pursuant to this  
18 Protective Order.

19 3. **SCOPE**

20 The protections conferred by this agreement cover not only confidential material (as  
21 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
22 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

24 However, the protections conferred by this agreement do not cover information that is in  
25 the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2       4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
5 categories of persons and under the conditions described in this agreement. Confidential material  
6 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
7 that access is limited to the persons authorized under this agreement.

8       4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
9 by the court or permitted in writing by the designating party, a receiving party may disclose  
10 material designated as “CONFIDENTIAL” only to:

11           (a) the receiving party’s outside counsel of record in this action, as well as  
12 employees of counsel to whom it is reasonably necessary to disclose the information for this  
13 litigation;

14           (b) the officers, directors, and employees (including in house counsel) of the  
15 receiving party to whom disclosure is reasonably necessary for this litigation;

16           (c) experts and consultants to whom disclosure is reasonably necessary for this  
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (d) the court, court personnel, and court reporters and their staff;

19           (e) copy or imaging services retained by counsel to assist in the duplication of  
20 confidential material, provided that counsel for the party retaining the copy or imaging service  
21 instructs the service not to disclose any confidential material to third parties and to immediately  
22 return all originals and copies of any confidential material;

23           (f) during their depositions, witnesses in the action to whom disclosure is  
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
26 transcribed deposition testimony or exhibits to depositions that reveal confidential material must

1 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
2 under this agreement;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Disclosure of "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY"

6 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
7 designating party, a receiving party may disclose any material designated as "HIGHLY  
8 CONFIDENTIAL-ATTORNEYS' EYES ONLY" only to the persons identified in Subparagraphs  
9 4.2(a), (c), (d), (e), and (g), and to in house counsel for each party who, prior to receipt of any  
10 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" materials, shall sign the  
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A).

12 4.4 Filing Confidential Material. Before filing confidential material or discussing or  
13 referencing such material in court filings, the filing party shall confer with the designating party,  
14 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
15 remove the confidential designation, whether the document can be redacted, or whether a motion  
16 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
17 designating party must identify the basis for sealing the specific confidential information at issue,  
18 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
19 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
20 the standards that will be applied when a party seeks permission from the court to file material  
21 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
22 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
23 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
24 the strong presumption of public access to the Court's files.

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1 5. DESIGNATING PROTECTED MATERIAL

2       5.1    Exercise of Restraint and Care in Designating Material for Protection. Each party  
 3 or non-party that designates information or items for protection under this agreement must take  
 4 care to limit any such designation to specific material that qualifies under the appropriate  
 5 standards. The designating party must designate for protection only those parts of material,  
 6 documents, items, or oral or written communications that qualify, so that other portions of the  
 7 material, documents, items, or communications for which protection is not warranted are not swept  
 8 unjustifiably within the ambit of this agreement.

9           Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
 12 and burdens on other parties) expose the designating party to sanctions.

13          If it comes to a designating party's attention that information or items that it designated for  
 14 protection do not qualify for protection, the designating party must promptly notify all other parties  
 15 that it is withdrawing the mistaken designation.

16       5.2    Manner and Timing of Designations. Except as otherwise provided in this  
 17 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or  
 18 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 19 be clearly so designated before or when the material is disclosed or produced.

20           (a)    Information in documentary form: (e.g., paper or electronic documents and  
 21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
 22 the designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-  
 23 ATTORNEYS' EYES ONLY" to each page that contains confidential material. If only a portion  
 24 or portions of the material on a page qualifies for protection, the producing party also must clearly  
 25 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

8 (c) Other tangible items: the producing party must affix in a prominent place  
9 on the exterior of the container or containers in which the information or item is stored the word  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.” If only a  
11 portion or portions of the information or item warrant protection, the producing party, to the extent  
12 practicable, shall identify the protected portion(s).

13        5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
14 designate qualified information or items does not, standing alone, waive the designating party's  
15 right to secure protection under this agreement for such material. Upon timely correction of a  
16 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
17 in accordance with the provisions of this agreement.

## 18 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19       6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
20 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
24 original designation is disclosed.

25       6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
26    regarding confidential designations without court involvement. Any motion regarding confidential

1 designations or for a protective order must include a certification, in the motion or in a declaration  
2 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
3 affected parties in an effort to resolve the dispute without court action. The certification must list  
4 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
5 to-face meeting or a telephone conference.

6       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
7 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
8 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
9 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
10 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
11 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
12 the material in question as confidential until the court rules on the challenge.

13 7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
14 LITIGATION

15       If a party is served with a subpoena or a court order issued in other litigation that compels  
16 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” that party must:

18           (a)     promptly notify the designating party in writing and include a copy of the  
19 subpoena or court order;

20           (b)     promptly notify in writing the party who caused the subpoena or order to  
21 issue in the other litigation that some or all of the material covered by the subpoena or order is  
22 subject to this agreement. Such notification shall include a copy of this agreement; and

23           (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
24 the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
3 material to any person or in any circumstance not authorized under this agreement, the receiving  
4 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
7 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be  
8 Bound" that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), except that a  
14 party notified that such material has been inadvertently produced shall promptly return or destroy  
15 all copies of the inadvertently produced material and confirm in writing to the disclosing party that  
16 all such material has been returned or destroyed. Such inadvertent disclosure shall not constitute  
17 or be deemed a waiver or forfeiture of any claim of privilege or other protection. This provision  
18 is not intended to modify whatever procedure may be established in an e-discovery order or  
19 agreement that provides for production without prior privilege review. The parties agree to the  
20 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

21 10. NON TERMINATION AND RETURN OF DOCUMENTS

22 Within 60 days after the termination of this action, including all appeals, each receiving  
23 party must either (i) return all confidential material to the producing party, including all copies,  
24 extracts and summaries thereof, or (ii) destroy all such confidential material, copies, extracts, and  
25 summaries thereof. The parties shall promptly confirm in writing that all such material has been  
26 returned and/or destroyed.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
4 product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a  
6 designating party agrees otherwise in writing or a court orders otherwise.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 DATED: May 25, 2022

9 */s/ Gilbert Levy*

10 Attorneys for Plaintiff/Counterclaim-  
11 Defendant

12 DATED: May 25, 2022

13 */s/ K. Michael Fandel*

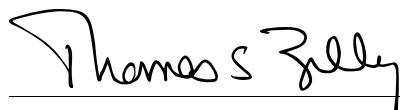
14 Attorneys for Defendants/Counterclaim-  
15 Plaintiffs

16 **ORDER**

17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
19 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
20 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
21 documents, including the attorney-client privilege, attorney work-product protection, or any other  
privilege or protection recognized by law.

22 DATED: May 26, 2022

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26 Thomas S. Zilly  
United States District Judge

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [DATE] in  
7 the case of *Smack Apparel Company v. Seattle Hockey Partners LLC d/b/a Seattle Kraken et al.*,  
8 Case No. 2:22-cv-00044-TSZ (W.D. Wash.). I agree to comply with and to be bound by all the  
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
11 promise that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
13 of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

18 || Date:

19 City and State where sworn and signed:

20 Printed name:

Signature: